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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/900,064 | 07/06/2001 | Barry J. Barclay | 545P007 | 7820 |

7590 03/19/2003
Kevin S. Lemack
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176 E. Main Street - Suite 8
Westboro, MA 01581

EXAMINER

DODSON, SHELLEY A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1616

DATE MAILED: 03/19/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,064

Applicant(s)

BARCLAY, BARRY J.

Examiner

SHELLEY A. DODSON

Art Unit

1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 (DAYS) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-73 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

DETAILED ACTION

Claims 1-73 are pending in this application filed 07/06/2001.

Applicant's claims are directed toward B complex vitamin compositions that protect against cellular damage caused by ultraviolet light.

RESTRICTION REQUIREMENT

15.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-42 are drawn to method of treating or preventing disease or disorder caused by UV radiation, classified in class 514, subclass 52.
- II. Claims 43-54 are drawn to a pharmaceutical composition, classified in class 514, subclass 52.
- III. Claims 55-71, drawn to sunscreen composition, classified in class 424, subclass 059+.
- IV. Claims 72-73, drawn to method of use, classified in class 514, subclass 52+.

16.

The inventions are distinct, each from the other because:

Inventions II or III and I or IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case both methods I and IV as claimed can be practiced with another materially different product such as cinnamic acid and salicylic acid. Additionally, applicant is claiming two different methods of use, more specifically, the method of use of Group I is merely treatment or prevention of disorders specifically caused by UV radiation. The method of Group IV treats a multiplicity of diseases and disorders.

17.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

18.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


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19.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (703) 308-2445. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. The examiner can also be reached on alternate Fridays.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7922. A facsimile center has been established in Crystal Mall 1, Room 7C11. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. The Patent examining Fax Center telecopier numbers are (703) 308-7921 and (703) 308-4556. Use of the new Crystal Mall 1 Center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 109 O.G. 30 (November 15, 1989).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

March 17, 2003